

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

GARY LONTELL DAVIS, #1050911,

Petitioner,

v.

ACTION NO. 2:12cv543

HAROLD CLARK,  
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, submitted a pro se petition, pursuant to 28 U.S.C. § 2254. The petition alleges a violation of federal rights pertaining to Petitioner's convictions in the Circuit Court for Accomack County for two counts of grand larceny. Petitioner was sentenced on June 17, 2010, to serve twenty years in the Virginia penal system, with ten years suspended.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed November 5, 2013, recommends granting Respondent's motion to dismiss and denying

the petition for a writ of habeas corpus.

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On November 19, 2013, the Court received Petitioner's objections to the Report and Recommendation. ECF No. 23. Petitioner objected to the Report and Recommendation stating there was insufficient evidence presented at trial to convict him of two counts of grand larceny. This claim, which was not raised on direct appeal, was procedurally defaulted in state court and Petitioner has failed to show cause and prejudice or a fundamental miscarriage of justice to excuse the procedural default. Accordingly, this federal habeas court cannot address the merits of the claim where the state court dismissed the claim based on an adequate and independent state procedural rule. See Fisher v. Angelone, 163 F.3d 835, 844 (4th Cir. 1998), citing Coleman v. Thompson, 501 U.S. 722, 731-32 (1991).

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed November 5, 2013. Accordingly, Grounds (a), (b), and (c) of the


Petitioner's claims neither (1) "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law," nor (2) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Ground (d) is DENIED because the claim was procedurally defaulted in state court.

It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 6) be GRANTED, and the petition for writ of habeas corpus (ECF No. 1) be DENIED and DISMISSED. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to  
Petitioner and counsel of record for Respondent.

/s/  
Rebecca Beach Smith  
Chief  
United States District Judge 

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Rebecca Beach Smith  
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
December 11, 2013